

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
JONATHAN EDENBAUM
d/b/a LIBERTY ASSISTED LIVING, INC.**

Petitioner
Jonathan Edenbaum
Nevi Majano Mendoza
For the Petition

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Board of Appeals Case No. S-2879
(OZAH Case No. 15-04)

Susan Blum
Community Participant
In Support of the Petition

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Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2879, filed on September 29, 2014, by Jonathan Edenbaum, d/b/a Liberty Assisted Living, Inc., seeks a special exception pursuant to §59-G-2.26 of the Zoning Ordinance,¹ to permit expansion of a currently functioning Small Group Home for the elderly (which is permitted by right for up to eight residents) into a Large Group Home for up to 10 residents and 9 staff members, at 8919 Liberty Lane, in Potomac, Maryland. It is located 300 feet east of Liberty Lane's intersection with Falls Road, and is identified as Lot 16, Block B, Beverly Farm subdivision, Tax account No. 04-02409354. The subject site is in the R-90 Zone, and within the Potomac Subregion Master Plan area.

On October 31, 2004, the Board of Appeals issued a notice scheduling the hearing for February 27, 2015 at 9:30 a.m. before the Office of Zoning and Administrative Hearings (Exhibit 12(b)). On December 3, 2014, Petitioner supplemented the record with a professionally drawn Site/Landscaping/Lighting Plan (Exhibit 14(a)), as well as a traffic statement (Exhibit 14(c)) and a Schedule of Operations (Exhibit 14(c)(ii)).

No filings were made by any members of the community either in support of or in opposition to the special exception petition.

Technical Staff of Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a memorandum dated January 14, 2015, recommended approval of the petition, on certain conditions (Exhibit 18).² On January 29, 2015, the Planning Board voted unanimously to recommend approval the special exception, with the same conditions as those recommended by the Technical Staff. The Planning Board's letter to that effect (Exhibit 19) was dated February 4, 2015, but was not delivered to OZAH until February 25, 2015. The Petitioner did not see it until the day of the hearing.

¹ Because the application was filed prior to October 30, 2014, it must be evaluated under the 2004 Zoning Ordinance, not the 2014 Zoning Ordinance. *See* 2014 Zoning Ordinance §59-7.7.1.B.1.

² The Technical Staff Report is frequently quoted and paraphrased herein.

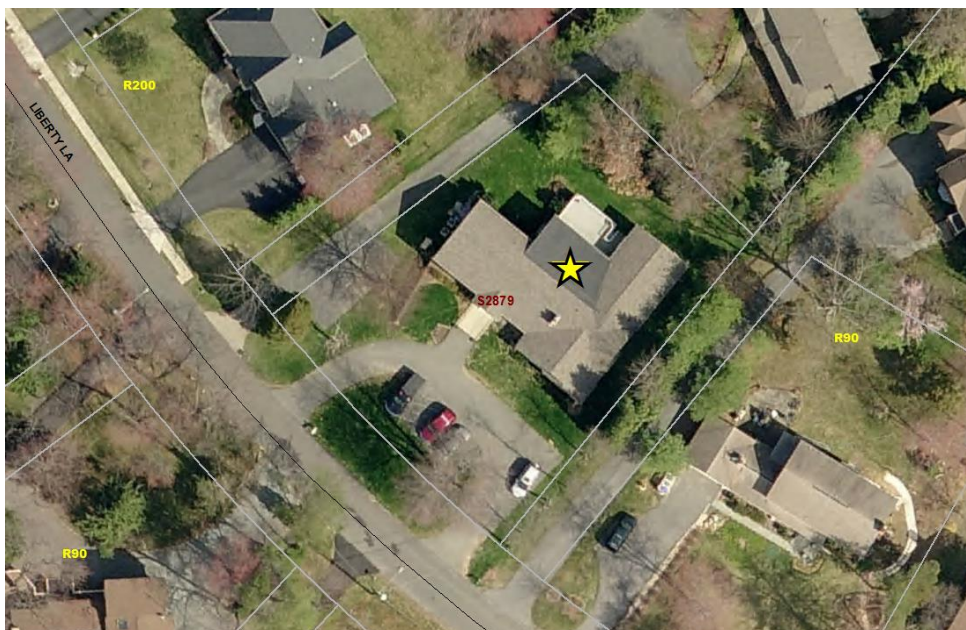
The public hearing was convened, as scheduled, on February 27, 2015, at which time Petitioner filed his affidavit of posting as Exhibit 21. Because the Petitioner had not received a copy of the Planning Board's letter (Exhibit 19), the Hearing Examiner gave those present time to read it and indicated that the record would be held open for 15 days after the hearing under the Board rules that were in effect when the petition was filed. Tr. 6-8. Petitioner Jonathan Edenbaum called two witnesses, himself and PetiNevi Majano Mendoza, the facility's office manager. A neighbor, Susan Blum, also testified in support of the petition. There were no other witnesses. The record was held open until March 16, 2015, but nothing further was filed, and it closed as scheduled on that date.

As will appear more fully below, the Petition satisfies all the requirements for the special exception sought, and the Hearing Examiner therefore recommends that it be granted, with specified conditions.

II. FACTUAL BACKGROUND

A. The Subject Property

As noted above, the subject property is located at 8919 Liberty Lane, in Potomac, Maryland, as depicted below in an aerial photograph from the Technical Staff report (Exhibit 18, p. 5):



The home is situated about 300 feet east of Liberty Lane's intersection with Falls Road, and is identified as Lot 16, Block B, Beverly Farm subdivision, Tax account No. 04-02409354. The subject site is in the R-90 Zone, and within the Potomac Subregion Master Plan area.

Technical Staff describes the property as follows (Exhibit 18, pp. 4-5):

. . . The Property is rectangular shaped and consists of 0.38 acres (16,704 SF) of land. The topography slopes to the west. It is improved with a one-story 4,852 Square-foot, single-family home with a basement. The front yard is lightly landscaped with grass, shrub and a few ornamental and shade trees and the entrance to the house is decorated with potted plants. . . . The Property is accessed from Liberty Lane through two driveway entrances located at the opposite ends. The entrances are connected to both ends of the driveway that curves to a semi-circle in the front yard. The semi-circular driveway accommodates six parking spaces in two areas. Two of the parking spaces are parallel spaces located on the eastern portion of the driveway and four in the front yard where the drive way curves into semi-circle shape. Additional three spaces are provided on a parking pad easement in the west side yard, adjacent to a stem lot.³ The three spaces are accessed from the stem lot access adjacent to the western property line. . . .

Technical Staff also reports that the front yard is lightly landscaped with grass, shrubs and a few ornamental and shade trees, as can be seen in the following photograph of the house (Exhibit 18, p. 4):



³ The permanent easement was implied by reference in the 1999 recorded plat for the subject site (Lot 16), as shown in Exhibit 4(b). The continued existence of the easement was upheld by a 2002 court decision, despite the fact that the site has another direct access to Liberty Lane (Exhibit 17). A pipe-stem driveway, abutting the easement, provides access to Lot 17, which is behind Lot 16.

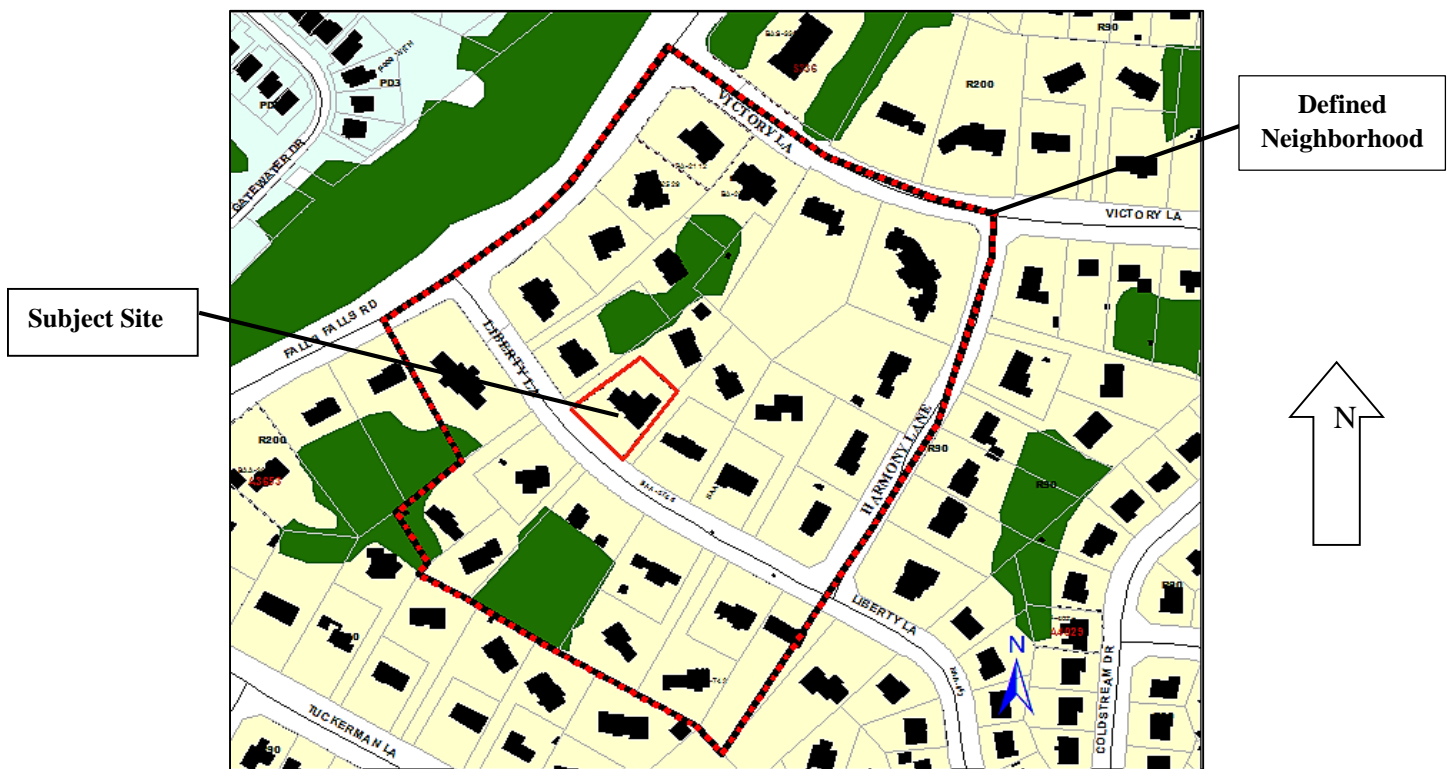
As described by Technical Staff (Exhibit 18, p. 4),

The existing structure has 10 bedrooms, 10.5 bathrooms, a living room, dining room/great room combination, a kitchen and a large deck in the back of the house. A storage area is located in the finished basement. The Applicant statement indicates that the house is equipped with a fire system, sprinkler, system, emergency lights and a full house natural gas generator. No external alteration or modification is proposed. The Home has a parking area to accommodate a minimum of nine vehicles. In addition, street parking is allowed along the Property's frontage on Liberty Lane.

Petitioner reports in its Summary Statement (Exhibit 3(b), p. 1) that Liberty Assisted Living Incorporated has been in operation since 2000, and is currently serving eight residents with 3 staff members on the floor during the day and one overnight staff at night.

B. The Neighborhood and its Character

Technical Staff proposed to define the neighborhood as bordered by Victoria Lane on the north; Falls Road on the west; Harmony Lane on the east; and the properties directly accessed from Liberty Lane on the south, as shown on the following map from the Staff report (Exhibit 18, p. 6):



The Hearing Examiner accepts Technical Staff's definition of the General Neighborhood. Staff describes the neighborhood as "developed with single-family dwellings in the R-90 Zone." Exhibit 18, p. 6.

C. Proposed Use

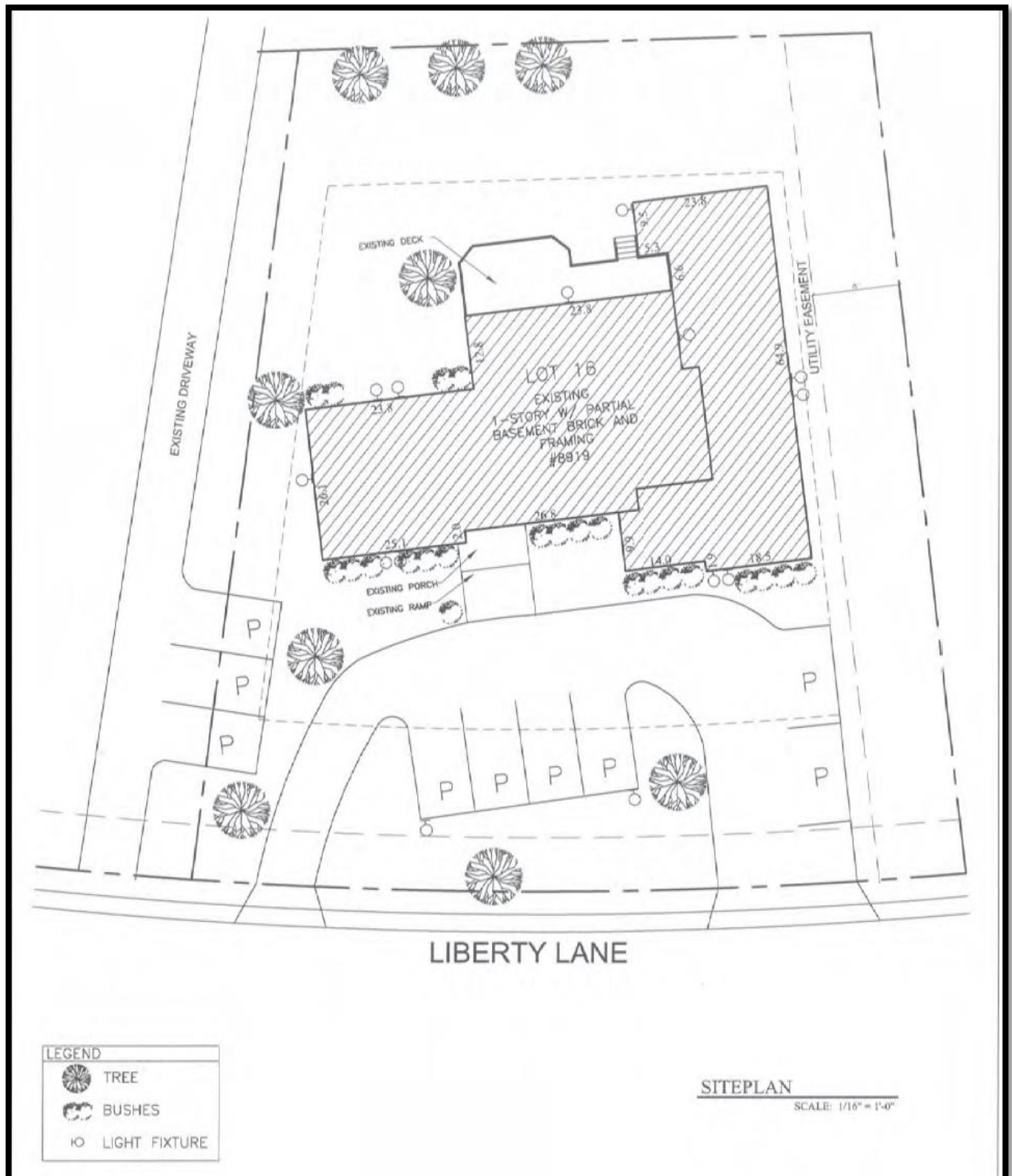
Petitioner Jonathan Edenbaum proposes to convert the existing structure, which presently serves as a Small Group Home, into a Large Group Home, in order to provide assisted living care for up to 10 elderly residents. A Small Group Home (defined in Zoning Ordinance §59-A-2.1 as a group home for 3 to 8 residents) is permitted in the R-90 Zone by-right, per Zoning Ordinance §59-C-1.31(a), while a Large Group Home (up to 16 residents) requires a special exception. Petitioner is requesting that the special exception be granted for up to 10 residents.

Mr. Edenbaum testified that he plans to convert the office, which originally was a bedroom, back into a bedroom on the main floor. The office would be moved to the lower level, a walk-out, finished basement. He would also make the master bedroom into double occupancy for a couple. Tr. 8-10. Floor Plans showing these changes are in the file as Exhibits 6(a) and (b).

He would make sure the home meets the regulations for a large group home, and would upgrade the fire system. There will be no exterior construction, and there will be no external changes to the grounds or the lighting. Tr. 8-10. Photos of the home's front and the rear deck (from Exhibit 10) are reproduced below:



The combined Site/Landscape/Lighting Plan (Exhibit 14(a)) is shown below:



Petitioner's Summary Statement (Exhibit 3(b)) indicates that the home is currently licensed by the State of Maryland and Montgomery County for eight residents, and Petitioner is seeking to license the home for 10 individuals to reside there. The Statement specifies that Liberty Assisted Living has adequate staff to meet the needs of 10 seniors in the home and is currently staffed with seven full time employees and two part time direct care employees. There are 3 staff members on the floor during the day and one awake overnight staff at night. According to Petitioner's Statement, the staff to resident ratio is well above the requirements specified by the State of Maryland. Also, the home itself is large enough to accommodate 10 residents if the request is granted.

Petitioner's Statement of Operations (Exhibit 3(a)) provides:

. . . The home operates 24 hours per day, seven days per week. Our scope of services range from providing assistance in activities of daily living, medication management, recreational activities, transportation to and from doctors' appointments, and most importantly providing a safe environment for our residents to age in place.

The home has nine parking spaces on the property as well as street parking in front of the home. The spaces are available 7 days a week, 24 hours a day. There is enough parking to accommodate employees and visitors any time of day and night. Visiting hours are unlimited since the facility promotes a home-like environment and family members are welcomed any time of day or evening hours to spend time with their family member in the home.

Our staff consists of seven full time employees and two part time direct care employees. We have a delegating nurse who works approximately 15 hours per week and is on call 24/7 in addition to the owner, an office manager (who is stationed at another home) a phlebotomist who comes when needed, an x-ray tech and a mobile dentist who visits when scheduled or requested.

We have two-12 hour shifts 8 a.m. -8 p.m., one- 8p.m.-8a.m., and one- 11 am-8p.m. shift seven days per week (see attached staff schedule). Our night shift is an awake overnight position. All of our staff has been trained in the field of Geriatric Caregiving as well as Medication Technicians who are licensed in the state of Maryland. Ongoing in-service training is provided to our staff by our delegating registered nurse throughout the year. . . .

Petitioner also provided a Schedule of Operations (Exhibit 14(c)(ii):

Shift 1- 8:00 AM to 8:00 PM

- 1- Night Shift Caregiver (clocking out)
- 2- Day Shift Caregiver (clocking in)
- 2- Visitors

Shift 2- 11:00 AM to 8:00 PM

- 1- Day Shift Caregiver (Clocking in)
- 2- Visitors

Evening Visitors (4:00 PM to 6:00 PM)

- 4-7- Visitors

Shift 3 8:00 PM to 8:00 AM

- 3-Day Shift Caregivers (Clocking Out)
- 1- Night Shift Caregiver (Clocking In)

Technical Staff observed (Exhibit 18, p. 4):

The Home will have seven full-time and two part-time employees working on various shifts around the clock. There will be three staff members on the floor during the day and one “awake overnight” staff at night. The Applicant’s statement indicates that with the proposed increase in the number of beds, the Home will maintain a 1:3 staff-to-resident ratio, which far exceeds the State’s minimum requirement of 1:8.

According to Technical Staff, deliveries to the property include a once every two month delivery of food products and a once a month delivery of incontinence products. Trash is picked up twice a week by Potomac Disposal, a company that picks-up the regular trash in the neighborhood. Residential type trash receptacles and recycling bins are located on the west side of the house, by the basement entrance and not visible from the street. Exhibit 18, p. 12. Staff recommends that there be no more than four deliveries to the property per month.

D. Master Plan

The subject property is included under the *Potomac Subregion Master Plan*, approved and adopted in 2002. The Master Plan does not specifically address the subject site, but the Plan’s text provides a general “Special Exception Policy” (pp. 35-36). Relevant recommendations include “Limit[ing] the impacts of special exceptions in established neighborhoods” and making “[e]fforts .

. . to enhance or augment screening and buffering as viewed from abutting residential areas . . .”
(pp. 35-36).

Technical Staff notes that the proposed application “is a low or no impact use.” Exhibit 18, p. 7. The Property is not located along a major transportation corridor, and there are no other special exception uses in the immediate vicinity of the Subject Property. Moreover, the Master Plan expressly recognizes the need for more senior housing in the area, and recommends that the Potomac Subregion “should meet it[‘s] own senior housing needs within its boundaries.” Plan, p. 36.

Given the fact that no external modifications to the site are planned, the proposed special exception should have virtually no adverse impact on the abutting residential community. Moreover, because it will fulfill a specific recommendation of the Master Plan and will not adversely affect the community, the proposed use, as conditioned by the Hearing Examiner’s recommendations, clearly meets the recommendations of the applicable Master Plan.

The Hearing Examiner also notes that the Master Plan does not recommend a change in the current R-90 Zone, and the use sought here is permitted by special exception in that zone. It is therefore fair to say that it is consistent with the goals of the Master Plan. As stated by Technical Staff (Exhibit 18, p. 11):

There are no major master plan concerns that are associated with this application. The proposed Group Home use is consistent with the land use objectives of the 2002 Potomac Master Plan. The proposed project is compatible with the existing development pattern of the adjoining uses as well as the immediate neighborhood, in terms of height, size, scale, traffic and visual impacts of the structure and parking.

E. Environment

There is no evidence in the record of any environmental problems in this case. Technical Staff acknowledged that the subject site is not subject to the Forest Conservation Laws (Exhibit 9). As

Staff stated in its report (Exhibit 18, p. 7):

There are no environmental issues or concerns associated with the subject proposal. The Property is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code. The application does not propose any clearing or grading activities on or near the special exception site. Moreover, the Property consists of less than 40,000 square feet of area.

F. Public Facilities, Transportation & Parking

Technical Staff found that public facilities, transportation and parking would meet all applicable criteria. As to public facilities and transportation, Staff stated (Exhibit 18, pp. 13-14):

. . . Existing public facilities—public roads, storm drainage, fire and police protection are adequate to serve the proposed use. The Application is exempt from the Local Area Transportation Review because it generates less than 30 peak hour trips. As an application in the Potomac Policy Area, it is not subject to Transportation Policy Area Mobility Review (TPAR) according to current Subdivision Staging Policies. . . . The proposed use will be adequately served by existing public roads. . . . [and] is not likely to negatively impact the safety of vehicular or pedestrian traffic.

Parking requirements are set forth in of Zoning Ordinance §59-G-2.26(a)(3). It calls for one parking space for every two residents and one space for every two employees on the largest work shift of the proposed Group Home. According to Technical Staff, a total of nine parking spaces is required. Exhibit 18, p. 9. Staff found that sufficient off-street parking is provided to serve the proposed group home. The existing circular driveway will accommodate up to six cars and there is an existing parking pad with three spaces located on an easement attached to the Property's western side yard. In addition, unrestricted on street parking is available on the Property's 125-foot wide frontage on Liberty Lane. Exhibit 18, p. 8.

G. Community Response

Petitioner testified that he had sent out letters (Exhibit 14(b)) to all of the neighbors and had an open house on the Sunday before the hearing. He stated that a few people came in, and everybody seemed very pleased. He has never had any trouble with the neighborhood. Tr. 26.

No letters in support or in opposition were filed by the neighbors, either with Technical Staff or with OZAH, and there was no opposition testimony at the hearing. The one community witness was Ms. Susan Blum, a neighbor who lives on the same side of the road as the facility, and about a block away. She gave high marks to Petitioner's operation, and she feels that Petitioner has made an effort to be friends with the neighborhood. Ms. Blum does not have any objections to what Petitioner is proposing because "it really isn't going to affect the neighborhood in any way." Tr. 27-30.

III. SUMMARY OF THE HEARING

At the beginning of the hearing, the Hearing Examiner received the affidavit of posting as Exhibit 21. He also ascertained that the parties had not received a copy of the Planning Board's letter (Exhibit 19). He gave those present time to read it and indicated that because it was not filed at least five business days before the hearing, he had to hold the record open for 15 days after the hearing under the Board rules that were in effect when the petition was filed. Tr. 6-8.

Petitioner Jonathan Edenbaum called two witnesses, himself and PetiNevi Majano Mendoza, the facility's office manager. A neighbor, Susan Blum, also testified in support of the petition.

A. Petitioner' Case

Jonathan Edenbaum and PetiNevi Majano Mendoza (Tr. 6-27):

Jonathan Edenbaum testified that he accepted all of the findings and conclusions in the Technical Staff report, Exhibit No. 18, as part of his evidence in the case, and that he accepted all of the conditions that the Technical Staff of the Planning Board recommended in Exhibit No. 18. Tr. 8.

Mr. Edenbaum further testified that the home opened in 2000 as an eight bed assisted living facility group home, license level three. In this petition, he is trying to convert the office, which originally was a bedroom, back into a bedroom on the main floor. The office would be moved to the

lower level, the walk-out, finished basement. He would also making the master bedroom a double occupancy for a couple. There will be no exterior construction, and there will be no external changes to the grounds. He would make sure the home meets the regulations for a large group home, and would upgrade the fire system. Tr. 8-10.

Mr. Edenbaum and Ms. PetiNevi Majano Mendoza identified the photographs in the Technical Staff report (Exhibit 18) and in the file (Exhibits 10(a), (b) and (c), and 16). Tr. 11-14, 17. They also identified their plans. The original site plan and landscape plan (Exhibits 4(a) and 5) were superseded by a professionally drawn, combined site and landscape plan (Exhibit 14(a)). Floor Plans are shown in Exhibits 6(a) and (b). Exhibit No. 7, the designated parking plan, was corrected in Exhibit 14(a) to show nine parking spaces. Tr. 14-20.

Mr. Edenbaum further testified that the facility is a 4,600 square foot home, and is of sufficient size to accommodate the proposed number of residents. There is plenty of parking and most staff actually take the bus so they don't even park there. The bus stop is at the end of the street. He asserted that the facility will comply with all the specific and general requirements for the special exception. He will not be changing the existing external lighting, nor adding any new sign. The name of the facility will remain on the mailbox. Tr. 20-25.

Mr. Edenbaum noted that he had sent out letters to all of the neighbors and had an open house on the Sunday before the hearing. A few people came in and everybody seemed very pleased. He has never had any trouble with the neighborhood. Tr. 26.

Ms. Mendoza, who has served as the office manager since August 2011, added that she did research to prove that the facility had enough parking to accommodate the few staff that might drive and family members. They also did a traffic statement (Exhibit 14(c)(i)) and a schedule of operations

(Exhibit 14(c)(ii)) for the purpose of showing that even in the worst case scenario, with most staff and visitors present, the facility would still be able to meet requirements for parking. Tr. 26-27.

B. Community Participant

Susan Blum (Tr. 27-30):

Susan Blum testified that she is a neighbor who lives on the same side of the road, about a block away. She has been in that neighborhood for over 20 years. She is also a clinical social worker and a geriatric care manager with Debra Levy Elder Care Associates, and she got to know Jonathan Edenbaum through her affiliation with Debra Levy Elder Care over 10 years ago. She visited the home when it first opened as part of her interest in knowing about facilities in general, but also because it was in the neighborhood. Over the years, she has gotten to know his homes in general, and they are highly regarded in her field because he provides very good care. As a neighbor, she is hardly aware that the facility is there because it does look like most of the other houses, but with a few more parking spaces. She has not heard complaints from neighbors, and she does not feel there's anything that people have objected to in terms of having it in the neighborhood. She believes that Petitioner has made an effort to be friends with the neighborhood. Children have gone in and performed community service projects there. Ms. Blum does not have any objections to what Petitioner is proposing because it really isn't going to affect the neighborhood in any way. [The Hearing Examiner noted that in addition to her testimony as a neighbor, she offered what amounted to some expert testimony as a social worker, but it has not been objected to, and he would accept it as learned layman testimony.] Tr. 27-30.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is

compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The Zoning Ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Ordinance §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1⁴ requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Zoning Ordinance § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational

⁴ As mentioned in footnote 1, because the application was filed prior to October 30, 2014, it must be evaluated under the 2004 Zoning Ordinance, not the 2014 Zoning Ordinance. *See* 2014 Zoning Ordinance §59-7.7.1.B.1.

characteristics are necessarily associated with a Large Group Home. Characteristics of the proposed Large Group Home that are consistent with the “necessarily associated” characteristics of Large Group Homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with Large Group Homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff identified the inherent physical and operational characteristics associated with a large group home as (Exhibit 18, p. 8):

- (1) a building large enough to house the proposed number of residents;
- (2) on-site parking sufficient to meet the requirements of the use and of the Zoning Ordinance;
- (3) outdoor lighting consistent with residential standards and adequate for safe vehicular and pedestrian access at night;
- (4) vehicular trips to and from the site by employees, visitors, residents, delivery and trash pick-up;
- (5) a modest level of outdoor activities associated with use of passive recreation area; and
- (6) noise from ambulances in emergency situations.

Staff found that the characteristics of the proposed special exception are inherent, except for the unusual easement (for the three parking spaces) that is accessed from the driveway to the lot located behind subject site. However, Staff concluded, and the Hearing Examiner agrees, that this single non-inherent characteristic will have no adverse impact on the neighborhood.

Staff found that “. . . the size, scale and scope of the proposed large group home will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption, or environmental impact. . . . Thus, there are no inherent or non-inherent adverse effects associated with this Application sufficient to warrant a denial of the subject special exception. The scale of the building, and the on-site parking areas shown on the site plan are

operational characteristics typically associated with a large group home and would not be unusual in any respect.” Exhibit 18, p. 8.

In reaching this conclusion, Staff noted that there will be no external alteration or modification to the existing house to accommodate the proposed increase of two beds, and therefore the proposed increase to 10 beds will not adversely affect the existing residential character of the immediate neighborhood. Adequate off-street parking is provided to serve the proposed large group home.

The Hearing Examiner finds that a house large enough to reasonably accommodate the 10 residents is an inherent characteristic of a large group home. In the subject case, the group home is housed in an ordinary looking residence, on a lot which provides sufficient parking. Because the residents are elderly, the additional traffic and parking which will be generated by two new residents will be nominal.

Accordingly, the Hearing Examiner agrees with Technical Staff’s conclusion that the large group home is compatible with adjacent development, as evidenced by the lack of community opposition, and that there are no inherent or non-inherent adverse effects associated with this petition sufficient to warrant denial of the subject special exception.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: A Large Group Home is a permissible special exception in the R-90 Zone, pursuant to Code § 59-C-1.31.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.26 for a Large Group Home, as outlined in Part C, below.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is included under the Potomac Subregion Master Plan, approved and adopted in 2002. For the reasons set forth in Part II.D. of this report, the Hearing Examiner finds that the proposed use is consistent with the recommendation of the applicable Master Plan regarding the appropriateness of a special exception at this location.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because the exterior of the structure housing the existing Small Group Home will not be changed to accommodate the increased number of residents to be housed in the proposed Large Group Home. The house is residential in character, will include only 10 residents and will create very little additional traffic.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As noted by Technical Staff (Exhibit 18, p. 12), “There is no indication that the proposed use would be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood.” Based on a preponderance of the evidence, the Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the nature of the proposed use, the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity at the subject site. Petitioner’s revised Site/Landscape/Lighting Plan (Exhibit 14(a)) satisfied Technical Staff and the Hearing Examiner that the illumination and glare would be kept within appropriate limits. As stated by Staff, “Existing lighting on the Property is adequate and consistent with the residential character

of the neighborhood and meets the objectives of the standard.” Exhibit 18, pp.

10. 12. No external lighting will be added. Tr. 20-25.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff indicates that there are no other group homes in the immediate area. Exhibit 18, p. 13. Given the small increase in activity that will be generated by the requested use and the absence of any external physical changes to the structure in question, Technical Staff and the Hearing Examiner conclude that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*
 (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.*
 (B) *If the special exception:*

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Technical Staff found that “. . . the Special Exception does not require approval of a Preliminary Plan of Subdivision.” Exhibit 18, p. 13. Therefore, under the terms of Zoning Ordinance §59-G-1.21(a)(9), the Board of Appeals must determine the adequacy of public facilities with the addition of the proposed use. Staff concluded, and the Hearing Examiner agrees, for the reasons set forth in Part II. F. of this report, that “Existing public facilities—public roads, storm drainage, fire and police protection are adequate to serve the proposed use.” Exhibit 18, p. 13. Based on Technical Staff’s finding that “The proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic (Exhibit 18, p. 14), the Hearing Examiner also finds that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 18) provide sufficient evidence that the specific standards required by Section 59-G-2.26 are satisfied in this case, as described below.

Sec. 59-G-2.26. Group home, large.

(a) ***When allowed.*** In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the Board of Appeals:

(1) *That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.*

Conclusion: Technical Staff found (Exhibit 18, p. 14):

The Property is of sufficient size to accommodate the proposed number of residents. The Property is currently being used as a small group home with eight beds. With the proposed special exception, the number beds increase to 10, with a net increase of two beds. The two-bed increase will be accommodated by alteration to the interior of the existing structure, modifying an existing double occupancy room and an office into two single occupancy bed rooms and a shared bathroom. The proposed increase of two beds can be accommodated within the existing structure and would not require an exterior expansion or addition to the existing residential structure.

There was no evidence to the contrary. Based on the preponderance of the evidence, the Hearing Examiner finds that the property to be used for the group home is of sufficient size to accommodate the proposed number of residents and staff.

(2) *That the site to be used as a group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.*

Conclusion: Not applicable. This group home will be for the elderly.

(3) *That off-street parking must be provided in the amount of one parking space for every 2 residents and one space for every 2 employees on the largest work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted.*

Conclusion: There will be ten residents and a maximum of eight full-time equivalent staff (7 full time and 2 part time). Therefore, even if all staff were present at once, 9 spaces would suffice $[(10 + 8)/2 = 9]$. Petitioner's Site Plan (Exhibit 14(a)) shows locations for 9 parking spaces, and this proposal therefore meets the parking requirements.

(b) ***Decision to be expedited.*** *In order to expedite a decision regarding a proposed group residential facility, the Board must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.*

Conclusion: This petition was scheduled by the Board of Appeals for an OZAH hearing on February 27, 2015 (Exhibit 12(b)), and the hearing was held as scheduled. The closing of the record had to be delayed for 15 days per the Board's Rule 7.2.6 because the Planning Board's letter (Exhibit 19) was not filed until two days before the hearing. The record closed as scheduled on March 16, 2015, and this report was issued 17 days later, on April 2, 2015.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff report demonstrates that the special exception complies with all development standards for the R-90 Zone. (Ex. 18, p. 9):

Current Development Standard	Required	Proposed
Minimum Lot Area	9,000 SF	11,160 SF existing
Minimum Lot width:		
• @ Front building line	75 ft	± 125 ft
• @ Street line	25 ft.	±125 ft
Minimum Building Setback:		
Front Yards	30	+60 ft
Side Yards		
▪ One side	8 ft	8 ft
▪ Sum of both sides	25 ft	25 ft
▪ Rear	25 ft	25 ft
Maximum Building Height	2 ½ stories or 35 ft	1 story+ basement (<30 ft)
Maximum Building Coverage	30%	<30%

(b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: Technical Staff concluded that the 9 parking spaces provided would satisfy the requirements for the proposed Large Group Home. For the reasons discussed in Part II. F. of this report, the Hearing Examiner finds that sufficient off street parking is provided to serve the proposed group home.

(c) ***Minimum frontage*** * * *

Conclusion: Not applicable, since no new building is proposed..

(d) ***Forest conservation.*** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Not applicable. The property is exempt from the forest conservation requirements of Chapter 22A. Exhibit 18, p. 7.

(e) ***Water quality plan.*** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Not applicable. There is no evidence that the site is in a special protection area or that there is an approved preliminary water quality plan. The outside of the existing building and the external property will not be modified, and Technical Staff indicated that there were no environmental concerns. Exhibit 18, p. 7.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner has indicated that no sign (other than the current mailbox identification) is contemplated for the property. The Hearing Examiner will recommend a condition that no additional sign be posted unless approved by the Sign Review Board and the Board of Appeals.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As mentioned above, Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given that no external modifications will be made, and it is compatible with the neighborhood.

(h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed elsewhere in this report, the existing lighting will not be modified, and it does not cause glare on adjoining properties. Technical Staff reports that the lights have been there for 10 years, and there have been no complaints from the neighbors. Exhibit 18, p. 10.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must

have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the residential appearance will be maintained because there will be no external modifications to the structure housing the Group Home.

Based on the record in this case , the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception he seeks. In sum, the Group Home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2879, seeking a special exception to convert a Small Group Home into a Large Group Home at 8919 Liberty Lane, in Potomac, Maryland, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of his testimony and exhibits of record, and by the testimony of his witnesses and his representations identified in this report;
2. The Petitioner will house no more than 10 residents in the group home, and up to 8 employees may be on the site at one time;
3. Deliveries of goods to the site must be limited to no more than four per month;
4. No sign, except for the current mailbox identification, may be posted on Petitioner's property unless approved by the Sign Review Board and the Board of Appeals;
5. Petitioner must maintain at least the 9 parking spaces called for in the Site Plan (Exhibit 14(a)), and may not expand the parking facility without express permission from the Board through modification of this special exception;

6. No external changes may be made on the site without permission from the Board of Appeals; and

7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 2, 2015

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin L. Grossman".

Martin L. Grossman
Hearing Examiner